

PART 1

PHASE III INSTRUCTIONS TO BIDDERS

WASHINGTON STATE FERRIES

NEW 144 – AUTO FERRIES DESIGN - BUILD CONTRACT

PHASE III INSTRUCTIONS TO BIDDERS

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WASHINGTON STATE FERRIES
NEW 144 – AUTO FERRIES
DESIGN AND BUILD CONTRACT NO. 00-6674

INSTRUCTIONS TO BIDDERS

SECTION 1 GENERAL INFORMATION

1.1 Introduction

This Part 1 of RFP Volume III provides the procedures and requirements for submission of fixed price bids in Phase III of the RFP process for design, construction and delivery of the Vessels by qualified Proposers. Only Proposers who have participated in Phase II of the RFP process and submitted a Technical Proposal approved by WSF may submit a bid in Phase III.

1.2 Scope of Work

The Scope of Work (“Contract Work”) includes the provision of all services, design, detailed design, drawings, labor, tools, equipment, materials, transportation, and incidentals for the design, construction, and delivery of four new Vessels, pursuant to the requirements of the Contract Documents, including the Proposer’s approved Technical Proposal, and the requirements of the Design - Build Contract contained in Part III of RFP Volume III.

The estimated price range for the Design - Build Contract for design, construction, and delivery of four new vessels is: \$218,000,000 - \$266,000,000.

1.3 Phase III Procurement Schedule

Action	Date
Final Technical Proposals Due – Phase II	January 2, 2007
Notice of Commencement of Phase III	February 1, 2007
Phase III Proposer Questions Due Date	March 23, 2007
Phase III Bid Due Date	April 12, 2007

1.4 Questions and Communications

1.4.1 Communications

The WSF Representative for receiving Proposer's questions and all other communications regarding Phase III bids is set forth as follows:

David H. Humphreys, Project Engineer
Washington State Ferries – Vessel Engineering
2901 Third Avenue, Suite 500
Seattle, WA 98121-3014
Phone: 206.515.3666
Fax: 206.515.3676
Email: Humphreys@wsdot.wa.gov

Except for communications expressly permitted by the RFP Package, Proposers shall not discuss the RFP with other WSF staff members or WSF consultants involved in the project before Contract award or cancellation of the RFP. Neither shall any Proposer discuss any aspect of their Technical Proposal or Phase III bid with any other Proposer or representative or agent of such other Proposer, provided however, previously prequalified and best qualified shipyards that participated in Phase II of the RFP process solely as a subcontractor to another Proposer may communicate with such Proposer regarding its Technical Proposal or Phase III bid. Any Proposer engaging in prohibited communications may be disqualified at the sole discretion of WSF.

1.4.2 Questions

Proposers will have previously had the opportunity to submit questions regarding the RFP documents during Phase II of the RFP process. Therefore, WSF will only entertain questions from Proposers during Phase III regarding addenda to the RFP documents which are issued after the deadline for Proposer questions in Phase II as set forth in RFP Volume II, "Phase II Procurement Schedule" Section. Such requests for clarification and interpretation must specifically reference the affected section(s) and page(s) of the Addenda to the RFP documents. Telephone requests will be accepted provided that the requests are followed up in writing by letter or email to WSF's Representative.

WSF shall only accept questions during the Phase III RFP process from Proposers, who have submitted Phase II Technical Proposals approved by WSF. WSF shall not accept, and has no obligation to respond to, inquiries from subcontractors, suppliers, vendors, other third parties or unsuccessful participants in Phase II.

WSF will provide written responses via e-mail to all Proposers participating in Phase III regarding questions received and allowed under this section and will also post the questions and answers on WSF's Contract website at

http://www.wsdot.wa.gov/ferries/your_wsf/doing_business_with/contracts/RequestForProposals/. The scope and content of a response to a Proposer's question shall be solely determined by WSF. No such response, or other communication by WSF, whether written or oral, shall constitute a modification to the requirements of the Technical Specification or other provisions of the RFP, including without limitation RFP Volume III, unless formally issued by WSF as an RFP Addendum. If WSF determines, in its sole discretion, that any interpretation or clarification resulting from the question and answer process requires a change in the RFP documents, WSF will issue an Addendum making such change.

1.5 Examination of RFP Documents

Each Proposer submitting a bid in Phase III acknowledges it has previously met the requirements regarding examination of the RFP documents contained in RFP Volume II, "Examination of RFP Documents" Section, and each such Proposer reaffirms the representations and warranties made by it therein. Each Proposer submitting a bid in Phase III further acknowledges and agrees that it is solely responsible for understanding the requirements of its approved Technical Proposal and all costs necessary to design, construct and deliver the Vessels in accordance with its approved Technical Proposal and the other requirements of the Contract Documents. In addition to the representations and warranties made by the Proposer pursuant to RFP Volume II, "Examination of RFP Documents" Section, each Proposer submitting a bid in Phase III represents and warrants that it specifically and solely assumes the risk of all consequences of any failure on its part to fully examine or understand the requirements of its approved Technical Proposal or the cost required to design, construct and deliver the Vessels in accordance with such approved Technical Proposal and the other requirements of the Contract Documents.

SECTION 2 BID FORM, PREPARATION AND SUBMISSION

2.1 Bid Form

Bids from Proposers submitting Phase III bids must be submitted on the WSF provided bid form found in Part 2 of this Volume. The Proposer must complete and provide all information required on the bid form, including bid amount, signatures, dates, acknowledgement of addenda, required certifications and other required information.

2.2 Preparation of Phase III Bids

Each bid shall be submitted only on the Bid Form furnished by WSF and shall be signed by the Proposer.

1 A Proposer's Bid Price shall include all costs estimated by the Proposer to be
2 necessary to fully, timely, and completely perform the Contract Work. By submitting
3 its bid, the Proposer acknowledges and agrees it shall not be entitled to any additional
4 payment or compensation in excess of its Bid Price due to any circumstance or
5 reason, except to the extent specifically allowed in the Contract Documents.
6

7 All prices, acknowledgments and signatures shall be legibly entered in the spaces
8 provided on the Bid Form, typed or in ink, and without alteration. All prices shall be
9 in legible figures (not words) written in ink or typed. The bid shall include the Bid
10 Price for design, construction, and delivery of four new Vessels as required by the
11 Contract Documents
12

13 In the space provided on the signature sheet, the Proposer shall confirm that all RFP
14 Addenda have been received.
15

16 The Proposer shall submit a completed "Disadvantaged, Minority or Women's
17 Business Enterprise Certification" if it applies.
18

19 Bids of corporations shall be signed by the officer or officers having authority to sign
20 them.
21

22 **2.3 Sales or Use Tax**

23

24 In accordance with RCW 82.08.0285 and 82.12.0279, Washington State sales or use
25 taxes shall not be included in any Bid Price since neither sales nor use taxes are
26 applicable to: sales of ferry vessels to the state of Washington for transportation
27 within or outside territorial waters; sales of tangible property which becomes a
28 component part of such vessels; and sales or charges for labor or services rendered in
29 the construction or improving such vessels. WSF will provide any available
30 Exemption Certificate to the successful proposer, upon request.
31

32 **2.4 Minority / Women Business Enterprises**

33

34 Currently, a Minority and Women-owned Business Enterprise (MWBE) goal is under
35 review at the Office of Equal Opportunity. WSF will advise all proposers of the
36 MWBE goal status by RFP Addendum. Refer to Appendix A, MWBE Participation,
37 attached hereto and by this reference incorporated herein.
38

39 **2.5 Bid Security**

40

41 Each bid shall be accompanied by Bid Security equal to at least five percent (5%) of
42 the Bid Price, as shown on the Bid Form. Bid Security shall be in the form of (i)
43 cash, a certified check, cashier's check, or project Bid Bond, or (ii) an annual Bid
44 Bond. Checks shall be payable to Washington State Ferries.

1 The Bid Security shall be submitted as evidence of good faith and as a guarantee that,
2 if awarded the Contract, the Proposer will execute and deliver the Contract and
3 provide the required insurance and Contract Security. Failure to furnish the required
4 Bid Security shall make the bid nonresponsive and shall cause the bid to be rejected
5 by WSF.

6
7 If a project or annual Bid Bond is selected, it must be submitted on the Bid Bond
8 form found in Part 2 of this Volume and signed by the Proposer and its surety. A Bid
9 Bond shall not be conditioned in any way to modify the required five percent (5%)
10 amount. The surety shall: (i) be registered with the Washington State Insurance
11 Commissioner; and (ii) appear on the current Authorized Insurance List in the state of
12 Washington published by the Office of the Insurance Commissioner. See the "Return
13 of Bid Security" Section, herein, for related information.

14
15 Should the successful Proposer fail to enter into the Design - Build Contract
16 contained in this RFP Volume III, and any addenda thereto, with WSF and furnish
17 satisfactory insurance and Contract Security within the time period specified, the Bid
18 Security shall be forfeited as liquidated damages, unless WSF approves a delay in
19 writing.

20 21 **2.6 Noncollusion Declaration**

22
23 When required by Section 112(c) Title 23, United States Code, a declaration shall be
24 provided certifying that the Proposer has not taken part in collusion or other action
25 that would restrain competitive bidding.

26
27 The Code of Federal Regulations [23 CFR Part 635.107(i)(I)] requires that: "Each
28 bidder shall file a sworn or unsworn statement executed by, or on behalf of the
29 person, firm, association, or corporation submitting the bid, certifying that such
30 persons, firm, association, or corporation has not either directly or indirectly, entered
31 into any agreement, participated in any collusion, or otherwise taken any action in
32 restraint of free competitive bidding in connection with the submitted bid." Failure to
33 submit the sworn or unsworn statement as part of the bid package will make the bid
34 nonresponsive and not eligible for award consideration". In addition, 23 CFR Part
35 635.107(i) requires that WSF provide the form for the declaration to prospective
36 Proposers and that the declaration shall be executed by such persons, firm,
37 association, or corporation under penalty of perjury under the laws of the United
38 States.

39
40 By signing and submitting a bid, each Proposer, including each member of a joint
41 venture if applicable, acknowledges and agrees it shall be deemed to have signed and
42 agreed to the Noncollusion Declaration.

2.7 Delivery and Opening of Phase III Bids

2.7.1 Due Date, Time and Location

The deadline for receipt by WSF of a properly completed and duly signed Phase III bid is as set forth in the "Phase III Procurement Schedule" Section above. ("Bid Due Date")

Sealed Phase III bids must be received at one of the following locations prior to the time specified on the Bid Due Date:

- A. At Post Office Box 47360, Olympia, Washington 98504 – 7360 until 11:00 A.M. on the Bid Due Date . WSDOT will consider notification of receipt by the Mail Room as the time of actual receipt of the bid.
- B. In the WSDOT Bid Room, located at the Transportation Building, 310 Maple Park Avenue SE, Olympia WA. 98501– 2361, until 11:00 A.M. on the Bid Due Date. Bids delivered in person will be received only in the Bid Room on the Bid Due Date.

WSF will not accept Phase III bids by facsimile or electronic transmission. Any Phase III bids that fail to meet the deadline or delivery requirements will be rejected and returned to the Proposer without consideration or evaluation.

Bids received will be publicly opened and read after 11:00 A.M. on the Bid Due Date.

2.7.2 Submission Instructions

The Phase III bid must be packaged in a sealed envelope clearly displaying the Proposer's name, contact person and address on the outside of the sealed envelope and labeled as follows:

PHASE III BID: NEW 144 – AUTO FERRIES DESIGN - BUILD CONTRACT
NO. 00-6674

Submittal deadline – date – time

Proposer Name, Contact Person, and Address

2.8 Withdrawal or Revision of Phase III Bids

After submitting a bid to WSF, the Proposer may withdraw or revise it if:

- A. The Proposer submits a written request signed by a duly, authorized person; and
- B. WSF receives the request before the Bid Due Date.

The original bid may be revised and resubmitted as the official bid if WSF receives it before the Bid Due Date. Any attempt by a Proposer to withdraw its Phase III bid after the Bid Due Date shall result in forfeiture of the Proposer's Bid Security.

SECTION 3 EVALUATION OF PHASE III BIDS

3.1. Alterations and Misrepresentations

Except as otherwise provided herein, bids which are incomplete, conditioned in any way, contain alterations or items not called for on the Bid Form, or which are not in conformity to the law, will be rejected as nonresponsive. Additionally, a Proposer shall not misrepresent its Prequalification status, the amount of its bid, or matters relating to its responsibility or its ability to perform the Contract Work. Misrepresentation may be cause for: (i) rejection of a bid; (ii) cancellation of Contract Award; or (iii) termination of the Contract.

3.2. Irregular Bids

- A. A bid **will** be considered materially irregular and **will** be rejected by WSF if:
 - 1) The Proposer has not submitted a Technical Proposal to WSF during Phase II which has been approved by WSF;
 - 2) The Bid Form furnished or authorized by WSF is not used, or is materially altered;
 - 3) The completed Bid Form contains any unauthorized additions, deletions, alternative bids, or conditions;
 - 4) The Proposer adds any provisions reserving the right to reject or accept the award, or enter into the Contract;
 - 5) The Bid Form is not properly executed;
 - 6) The Proposer fails to submit or properly complete other items required with the Bid, including Bid Security, or

1
2 7) The bid does not constitute a definite and unqualified offer to meet the
3 material terms of the RFP.
4

5 B. A bid **may** be considered irregular and **may** be rejected by WSF if:
6

7 1) Receipt of Addenda is not acknowledged on the Bid Form;
8

9 2) Bid entries are not legibly typed or made in ink.
10

11 3) WSF identifies any other material irregularity.
12

13 **3.3 Non-Responsibility** 14

15 WSF, at its discretion, **may** reject a proposal if it determines that a Proposer is not
16 responsible for any of the following reasons:
17

18 A. Evidence of collusion with any other Proposer or Proposers is found.
19 Participants in such collusion will be disqualified from submitting proposals
20 on any further work;
21

22 B. A material change in the information provided by, or the status or
23 circumstances of, the Proposer, upon which its prior pre-qualification for this
24 procurement was based. By submitting a Phase III bid, each Proposer agrees
25 to cooperate with WSF in WSF's evaluation of the Proposer's responsibility
26 and determination of whether there has been any material change in the
27 Proposer's prequalification information, status or circumstances.
28 Such cooperation shall include granting WSF access to the Proposer's
29 shipyard or other facilities which it intends to employ in performing the
30 Contract Work and providing WSF information necessary to evaluate the
31 Proposer's responsibility;
32

33 C. The Proposer has uncompleted work (WSF or otherwise) which might hinder
34 or prevent the prompt completion of the Contract Work;
35

36 D. The Proposer fails to pay or settle bills for labor or materials on past or
37 current contracts;
38

39 E. The Proposer has failed to complete a written public contract, or has been
40 convicted of a crime arising from a previous public contract;
41

42 F. The Proposer is unable, financially or otherwise, to perform the Contract
43 Work;
44

45 G. The Proposer is not authorized to do business in the state of Washington; or
46

1 H. The Proposer has violated material requirements of the RFP for this
2 procurement; or

3
4 I. Any other reasons deemed proper by WSF.
5

6 **3.4 Consideration of Bids**
7

8 A. After opening and reading the bids, WSF will verify the bids for correctness
9 of form, compliance with bid terms set forth herein, and the totals. WSF may
10 reject a bid or disqualify a Proposer for those reasons set forth in this Section
11 3.
12

13 B. WSF reserves the right, at its sole discretion to:
14

15 1) Appoint an Expert Review Panel to advise it in regard to evaluation of
16 Phase III bids or any other aspect of the RFP;
17

18 2) Investigate the qualifications of any Proposer;
19

20 3) Require confirmation of information previously furnished by a
21 Proposer;
22

23 4) Require additional information from a Proposer concerning its
24 responsibility or ability to perform the Contract Work;
25

26 5) Issue addenda which modify or amend the RFP Documents;
27

28 6) Waive immaterial deficiencies or irregularities in a Phase III bid;
29

30 7) Reject any or all of the Phase III bids;
31

32 8) Cancel, modify or withdraw the RFP; or
33

34 9) Issue a new request for proposals.
35

36 C. Proposers are notified that WSF reserves the right to reject any or all bids,
37 without cause or for any reason, including rejection where the lowest
38 responsive and responsible bid exceeds WSF's good faith estimate by an
39 unreasonable amount. In the event all bids are rejected, the project may be
40 deferred indefinitely for re-advertisement, or otherwise.
41

42 D. A Proposer who wishes to claim error in its bid after the bids have been
43 publicly opened and read as required by RCW 47.28.090 shall promptly notify
44 WSF that an error occurred. The Proposer shall submit a notarized affidavit
45 or declaration under penalty of perjury signed by the proposer and
46 accompanied by the work sheets used in the preparation of the bid, requesting

1 relief from the responsibilities of award. The affidavit or declaration shall
2 describe the specific error(s) and certify that the work sheets are the ones used
3 in preparing the bid.
4

- 5 E. The affidavit or declaration shall be submitted no later than 5:00 p.m. on the
6 first business day after the Bid Due Date or the claim will not be considered.
7 WSF will review the affidavit or declaration and the certified work sheets to
8 determine the validity of the claimed error and if the error is of the kind for
9 which the law allows relief from forfeiture of the Bid Security. If WSF
10 concurs in the claim of error and determines that the error is of the kind which
11 allows relief from forfeiture, the Proposer will be relieved of responsibility
12 and the bid deposit of the Proposer will be returned. If WSF does not concur
13 in the error or determines that the error is not the kind for which the law
14 allows relief, WSF may award the Contract and if the Proposer refuses to
15 execute the Contract, the Proposer's Bid Security shall be forfeited as required
16 by RCW 47.28.100.
17

18 **SECTION 4 AWARD AND EXECUTION OF DESIGN - BUILD CONTRACT**

19

20 **4.1 Award of Contract**

21

- 22
- 23 A. The successful Proposer will be the responsive and responsible proposer who
24 offers WSF the lowest BID PRICE as shown on the Bid Form.
25
- 26 B. The Contract Award amount will be the BID PRICE as shown on the Bid
27 Form.
28
- 29 C. In the event two or more bids are equal in amount, WSF will select the
30 successful bid by a coin toss or by lot.
31
- 32 D. All bids shall remain in effect for ninety (90) calendar days after the Bid Due
33 Date. Upon mutual consent of the apparent successful Proposer and WSF,
34 this period may be extended. If the apparent successful Proposer and WSF
35 cannot agree on an extension, WSF reserves the right to award the Contract to
36 the next lowest responsive and responsible Proposer or reject all bids. WSF
37 will notify the successful Proposer in writing when it has been awarded the
38 Contract. WSF shall also notify all other Proposers that they were not
39 selected.

1
2 **4.2 Execution of Contract**
3

- 4 A. Within twenty (20) calendar days after the notice of award date, the successful
5 Proposer shall return the signed Design - Build Contract together with the
6 insurance certification, Contract Security and any other pre-award information
7 required by the Contract Documents.
8
9 B. Until WSF signs the Design - Build Contract, no bid shall bind WSF, nor shall
10 any Contract Work begin. The Contractor shall bear all risks for any Contract
11 Work begun and for any materials ordered before the Design - Build Contract
12 is signed by WSF.
13
14 C. If the Proposer experiences circumstances beyond its control that prevents
15 return of the Contract Documents within the specified number of days after
16 the award date, WSF may grant additional calendar days for return of the
17 Documents, provided WSF deems the circumstances warrant it.
18

19 **4.3 Contract Security**
20

21 As required by Revised Code of Washington (RCW) 39.08 and the Design - Build
22 Contract, a proper bond(s) in the amount(s) of the required Contract Security shall be
23 provided by the Contractor.
24

25 The Contract Security Bond(s) shall:
26

- 27 A. Be on the WSF-furnished form(s), found in Part 2 of this Volume.
28
29 B. Be issued by a surety with a Best's rating of at least "A" or better and Financial
30 Size Category of VIII or better by A.M. Best Co. The Surety shall: (1) be
31 registered with the Washington State Insurance Commissioner, and (2) appear
32 on the current Authorized Insurance List in the state of Washington published
33 by the Office of the Insurance Commissioner.
34
35 C. Be conditioned upon the faithful performance of the Design - Build Contract
36 by the Contractor within the prescribed time; and
37
38 D. Guarantee that the surety shall indemnify, defend, and protect WSF against
39 any claim of direct or indirect loss resulting from the failure:
40
41 1) Of the Contractor (or any of the employees, subcontractors, or lower
42 tier subcontractors of the Contractor) to faithfully perform Design -
43 Build the Contract; or
44
45 2) Of the Contractor (or the subcontractors or lower tier subcontractors of
46 the Contractor) to pay all laborers, mechanics, subcontractors, lower

1 tier subcontractors, material person, or any other person who provides
2 supplies or provisions for carrying out the work.
3

4 WSF may require sureties or surety companies on the Contract Security Bond to
5 appear and qualify themselves. Whenever WSF deems the surety or sureties to be
6 inadequate, it may, upon written demand, require the Contractor to furnish additional
7 surety to cover any remaining work. Until the added surety is furnished, payments
8 for Contract Work shall not be due.
9

10 **4.4 Failure to Execute Design - Build Contract**

11

12 Failure to return insurance certification and approved Contract Security, or other pre-
13 award information required by the Contract Documents with the signed Design -
14 Build Contract, or failure or refusal to sign the Design - Build Contract shall result in
15 forfeiture of Bid Security. If this should occur, WSF may then award the Design -
16 Build Contract to the responsive and responsible Proposer who offers WSF the
17 second lowest Bid Price, or reject all remaining bids. If the second lowest responsive
18 and responsible Proposer fails to return the required documents as stated above within
19 the time provided after award, the Design - Build Contract may then be awarded
20 successively in a like manner to the remaining lowest responsive and responsible
21 Proposers until the above requirements are met or the remaining bids are rejected.
22

23 **4.5 Return of Bid Security**

24

25 All Bid Securities will be held until the Design - Build Contract has been properly
26 executed. When the Design - Build Contract has been properly executed, all
27 remaining Bid Securities, except those subject to forfeiture, will be returned.
28
29

30 **SECTION 5 PROTEST PROCEDURES**

31

32 This Section sets forth the exclusive protest procedures and remedies available with
33 respect to the RFP Phase III process. Each Proposer, by submitting its Phase III bid,
34 expressly recognizes the limitation on its rights to protest contained herein, expressly
35 waives all other rights and remedies, and agrees that the decision on any protest, as
36 provided herein, shall be final and conclusive and not subject to legal challenge
37 unless wholly arbitrary. These protest procedures are included in the RFP expressly
38 in consideration for such waiver and agreement by the Proposers. Such waiver and
39 agreement by each Proposer are also consideration to each other Proposer for making
40 the same waiver and agreement.
41

42 If a Proposer disregards, disputes, or does not follow the exclusive protest remedies
43 set forth in the RFP, it shall be deemed to have failed to exhaust its administrative
44 remedies.
45

46 **5.1 Protests Regarding RFP Documents**

Each Proposer acknowledges and agrees that it has previously been afforded an opportunity to protest the terms of the RFP Documents during Phase II of the RFP process. Therefore, Proposers shall have no right to protest the terms of the RFP Documents during Phase III, except solely in regard to newly issued Addenda which must be protested within the timeframes, and according to the procedures, set forth in RFP Volume II, "Protests During Phase II Development of Technical Proposals" Section.

5.2 Protests Regarding Acceptance or Rejection of Phase III Bid

A Proposer may protest, according to the procedures set forth herein, a final decision by WSF regarding acceptance or rejection of a Phase III bid provided the following conditions precedent are met: (1) the Proposer has previously submitted in Phase II a properly certified and designated final Technical Proposal which has been approved by WSF; (2) the Proposer has submitted a Phase III bid and has complied with the requirements and procedures for this RFP Volume III; and (3) WSF has issued an initial written determination of intent to award the Design - Build Contract.

In such event, the Proposer must provide notice of protest to WSF's Representative within five (5) calendar days after issuance of WSF's written notice of initial intent to award the Design - Build Contract

Within seven (7) calendar days after delivery of its notice of protest, the protesting Proposer must file with WSF a detailed statement of the grounds, legal authorities, and facts, including all documents and evidentiary statements, in support of the protest. Evidentiary statements, if any, shall be submitted under penalty of perjury. The protesting Proposer shall have the burden of proving its protest by clear convincing evidence.

Failure to file a notice of protest or a detailed statement within the above designated period shall constitute an unconditional waiver of the right to protest WSF's decision on the Phase III bids. No evidentiary hearing or oral argument shall be provided, except in the sole discretion of WSF. WSF will issue a written decision regarding the protest and its final award decision within fifteen (15) days after it receives the detailed statement of protest; provided WSF may require additional time to review and issue a decision in which event it shall advise the protesting Proposer of WSF's anticipated decision date. Such decision by WSF shall be final and conclusive and not subject to legal challenge unless wholly arbitrary.

Judicial Review: Pursuant to RCW 47.60.822, a petition requesting judicial review of WSF's final award decision, must be filed with the Thurston County Superior Court and served on WSF within five (5) calendar days of Proposer's receipt of WSF's final written award decision. Failure by the Proposer to timely file and serve such petition shall be deemed a waiver of any right of the Proposer to seek judicial review of WSF's award decision.

1
2
3 **SECTION 6 MISCELLANEOUS**
4

5 **6.1 Pre-RFP Representations**
6

7 All project information previously provided by WSF or interested parties, whether
8 verbal or in writing, is superseded by the contents of this RFP and all Addenda
9 thereto. WSF shall not be liable to any party for: (i) any prior representations made
10 by WSF or its agents; or (ii) the contents of any preliminary documents issued prior
11 to this RFP.
12

13 **6.2 Preparation Costs**
14

15 WSF shall not be liable to any Proposer for its bid preparation costs or any other
16 direct or indirect costs arising from a response to this RFP; provided however,
17 Proposers who submit unsuccessful Phase III bids and otherwise meet the
18 requirements of the RFP may be eligible for an honorarium.

(END)

PART 1

APPENDIX A

MINORITY AND WOMEN'S BUSINESS ENTERPRISE (MWBE) PARTICIPATION

APPENDIX A

MINORITY AND WOMEN'S BUSINESS

ENTERPRISE (MWBE) PARTICIPATION

1 **(February 16, 1999)**

2 **A. General Statement**

3
4 In accordance with the legislative findings and policies set forth in Chapter 39.19
5 RCW, Washington State Ferries (WSF) encourages participation in all of its
6 Contracts by MWBE firms certified by the office of Minority and Women's Business
7 Enterprises (OMWBE). Participation may be either on a direct basis in response to a
8 solicitation/invitation, or as a subcontractor to a Bidder/Proposer. No preference will
9 be included in the evaluation of bids/proposals, no minimum level of MWBE
10 participation shall be required as a condition for receiving an award, and
11 bids/proposals will not be rejected or considered non-responsive on that basis.
12

13 **B. Voluntary MWBE Goals**

14
15 Voluntary numerical MWBE participation goals shall be established for all
16 solicitation / invitations where applicable. These goals are voluntary, but
17 achievement of the goals is encouraged. To determine if there is a voluntary
18 numerical MWBE participation goal established for this Contract, please refer
19 to Section F below. WSF encourages MWBE participation, and bidders may
20 contact OMWBE at 360-753-9693 to obtain information on certified firms.
21

22 **C. Affirmative Efforts To Increase Participation By MWBEs**

23
24 **Voluntary Efforts**

25
26 Bidders/Proposers/Contractors are encouraged to:

- 27
28 1. Advertise opportunities for subcontractors or suppliers in a manner reasonably
29 designed to provide MWBEs capable of performing the work with timely
30 notice of such opportunities and all advertisements should include a provision
31 encouraging participation by MWBE firms. Advertising may be done through
32 general advertisements (e.g., newspapers, journals, etc.) or by soliciting
33 bids/proposals directly from MWBEs.
34
35 2. Provide MWBEs that express interest with adequate and timely information
36 about plans, specifications, and requirements of the Contract. Break down
37 total requirements into smaller tasks or quantities, where economically

feasible, in order to permit maximum opportunity for participation by MWBEs and other small businesses.

- 3.
- Utilize the services of available minority community organizations, minority Contractor groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of MWBEs and other small businesses.
- 4.
- Establish delivery schedules, where requirements of the Contract permit, that encourage participation by MWBEs and other small businesses.

The actions described in this section should supplement efforts to provide information to all qualified firms, and nothing in this section is intended to prevent or discourage the Bidders/Proposers/Contractors from inviting proposals for participation from non-MWBE firms as well as MWBE firms.

Non-discrimination

Contractors, Bidders, and Proposers shall not create barriers to open and fair opportunities for all businesses, including MWBEs, to participate in all WSF Contracts and to obtain or compete for Contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, national origin, sex, age, nationality, marital status, or the presence of any mental or physical disability in an otherwise qualified disabled person.

The Contractor shall make the MWBE Participation General Statement cited previously in this provision a part of all subcontracts and agreements entered into as a result of this Contract.

D. Definitions

When referred to in this Contract, the terms Minority, Minority Business Enterprise (MBE), and Women's Business Enterprise (WBE) will be construed to have the following meanings:

- 1.
- Minority means a person who is a citizen or lawful permanent resident of the United States and who is:
 - a)
 - Black: having origins in any of the black racial groups of Africa;
 - b)
 - Hispanic: of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

1 c) Asian American and Pacific Islanders: having origins in any of the
2 original peoples of the Far East, Southeast Asia, the Indian
3 subcontinent, or the Pacific Islands; or
4

5 d) American Indian or Alaskan Native: having origins in any of the
6 original peoples of North America.
7

8 2. Minority Business Enterprise, Minority-owned Business Enterprise, or MBE
9 means a business organized for profit, performing a commercially useful
10 function, which is owned and controlled by one or more minority individuals
11 or minority business enterprises. Owned and controlled means a business in
12 which one (1) or more minorities or MBE's own at least fifty-one percent
13 (51%), or in the case of a corporation at least fifty-one percent (51%) of the
14 voting stock, and control at least fifty-one percent (51%) of the management
15 and daily business operations of the business.
16

17 3. MWBE means a minority-owned business enterprise, a women-owned
18 business enterprise, and/or a combination minority and women's business
19 enterprise certified by the Office of Minority and Women's Business
20 Enterprises (OMWBE) of the State of Washington.
21

22 4. Women's Business Enterprise, Women-owned Business Enterprise, or WBE
23 means a business organized for profit, performing a commercially useful
24 function, which is owned and controlled by one or more women or women's
25 business enterprises. Owned and controlled means a business in which one or
26 more women or WBE's own at least fifty-one percent (51%) or in the case of
27 a corporation at least fifty-one percent (51%) of the voting stock, and control
28 at least fifty-one percent (51%) of the management and daily business
29 operations of the business. The women owners must be United States citizens
30 or lawful permanent residents.
31

32 5. Minority/Women's Business Enterprise means a minority-owned business
33 enterprise, a women-owned business enterprise; and/or a combination
34 minority and women's business enterprise certified by the OMWBE of the
35 State of Washington.
36

37 **E. MBE / WBE Status**
38

39 A consolidated list of firms accepted as certified by OMWBE is available via the
40 WSDOT Home Page, (WWW.WSDOT.WA.GOV), and a hard copy is available at
41 nominal cost from the OMWBE.

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F. MBE / WBE Goals

MWBE Goal: 0% of the Total Bid Price.

The voluntary goal may be met by MBE, WBE or a combination of MBE/WBE participation.

G. Further Information

If further information is desired concerning Minority Business Enterprise/Women's Business Enterprise participation, inquiry may be directed to:

External Civil Rights Branch
Office of Equal Opportunity
Washington State Department of Transportation
Transportation Bldg., P.O. Box 47314
Olympia, WA 98504-7314

Phone: (360) 705-7085

Fax: (360) 705-6801

(END)